

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER BANKS,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY  
SUPERVISION; WARDEN, Green Haven  
Correctional Facility,

Defendants.

20-CV-8791 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff filed this action *pro se*. By order dated October 26, 2020, the Court directed Plaintiff to submit an *in forma pauperis* (IFP) application and prisoner authorization or pay the filing fees. After Plaintiff failed to do either, on January 5, 2021, the Court dismissed the action and the Clerk of Court entered judgment on January 6, 2021. (ECF 3-4.)

On February 18, 2021, the Court received Plaintiff's notice of appeal and his motion for an extension of time to file the notice of appeal. (ECF 5-6.) For the following reasons, Plaintiff's request for an extension of time to file a notice of appeal is granted.

**DISCUSSION**

Under Fed. R. App. P. 4(a)(1)(A), a notice of appeal in a civil case must be filed within thirty days after entry of judgment. The district court may extend the time to file a notice of appeal, however, if a plaintiff files a motion within thirty days of the expiration of the time to file notice of appeal, and if the moving party shows excusable neglect or good cause for the untimely filing. *See* Fed. R. App. P. 4(a)(5)(A).

Plaintiff submitted his request for an extension of time to file notice of appeal within thirty days after the time to file his notice of appeal had expired. In his motion, he does not

address the timeliness of his notice of appeal. Rather, he alleges that he never submitted a complaint in 2020, and in particular, this action: “I never received notice indicating I was a party to 20-CV-8791-CM prior to dismissal notice from clerk/judge on 1/25/2021, and I didn’t submit a § 1983 suit in 2020.” (ECF 5) (emphasis omitted). Plaintiff’s motion is dated January 27, 2021. (*See id.*)

As Plaintiff alleges that he first learned of this action on January 25, 2021, and completed the motion for an extension of time to file a notice of appeal two days later, the Court concludes that he shows good cause for filing an untimely notice of appeal and grants the motion.

### CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Court grants Plaintiff’s motion for an extension of time to file a notice of appeal. (ECF 5.)

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: March 18, 2021  
New York, New York



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COLLEEN McMAHON  
Chief United States District Judge